



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

November 21, 1963

Honorable Joe Resweber
County Attorney
Harris County
Houston, Texas

Opinion No. C-182

Re: Whether certain instruments submitted to the County Clerk of Harris County by the Board for Texas State Hospitals and Special Schools can be filed in the County Clerk's Office, and related question.

Dear Mr. Resweber:

The questions which you have asked deal with certain instruments submitted to the County Clerk for filing. The instruments are claims of liens against the estates of former patients of various State Hospitals or Special Schools for the care and maintenance of the patients while they were in the hospital or school. The claims are verified by a Claims Representative of the Board For Texas State Hospitals and Special Schools.

The questions that you have asked are as follows:

"(1) Can these instruments be filed in the County Clerk's office?

"(2) If so, in what record should they be recorded?"

Article 6601 of Vernon's Civil Statutes reads as follows:

"All deeds of trust, mortgages or judgments which are required to be recorded in order to create a judgment lien, or other instruments of writing intended to create a lien, shall be recorded in a book or books separate from those in which deeds or other conveyances are recorded."
(Emphasis added).

Article 6626 of Vernon's Civil Statutes reads in part as follows:

"The following instruments of writing which shall have been acknowledged or proved according

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to law, are authorized to be recorded, viz: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or moveable property of any description; . . ."

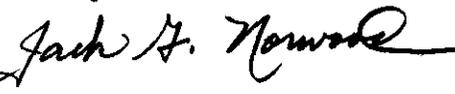
It is well settled that the duties of a recording officer such as the County Clerk are ministerial. First National Bank v. McElroy, 112 S.W. 801 (Tex.Civ.App. 1908). The instruments submitted show on their face that they are instruments of writing intended to create a lien and therefore fall clearly within the purview of Article 6601, quoted above. However, this opinion is not intended to pass on whether these particular instruments create a valid lien. The recording officer does not have the power to pass on the validity of such an instrument; it is his duty to file the instrument provided that it complies with the form prescribed by Article 6626, as set out above. Such instrument should be filed in accordance with Article 6601 and placed in the mortgage records.

SUMMARY

Instruments of writing intended to create a lien which are in the proper form should be filed in the County Clerk's Office in accordance with Article 6601 of Vernon's Civil Statutes.

Yours very truly,

WAGGONER CARR
Attorney General

BY 

Jack G. Norwood
Assistant

JGN:wb

APPROVED:

OPINION COMMITTEE

George Gray, Chairman
Cecil Rotsch
Paul Robertson

APPROVED FOR THE ATTORNEY GENERAL

BY: Stanton Stone